



# Sacramento County District Attorney's Office

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## Officer-Involved Shooting: Stephon Clark

### Summary of Legal Review

The District Attorney's Office has completed its legal review of the Sacramento Police Department officer-involved shooting of Stephon Clark that occurred on March 18, 2018. In addition to the full report, the following is a summary of the findings of our legal review.

#### **The Role of the District Attorney**

As a matter of policy, this office has been asked and has agreed to review police use of force incidents that involve death or serious injury in Sacramento County. The role of the District Attorney's office in officer-involved shootings is limited to one question: **Is there sufficient evidence to charge any involved officer with a crime?**

The District Attorney's Office does not evaluate or provide an opinion on whether officers could have taken some other action, their tactical decisions, agency procedures or civil liability. These are valid areas of concern, but they are not part of our review.

In this case, the Attorney General has agreed to perform his own independent review of this shooting. In our review, you will see that evidence was collected by the Sacramento Police Department, the District Attorney's Office (including our crime laboratory), and the Attorney General's Office (Department of Justice). While we have each agreed to share all the evidence we discover, our offices have not shared the analysis of this evidence or our conclusions.

#### **Circumstances of the Shooting**

An extensive and thorough review of the evidence in this case shows the following:

On Sunday, March 18, 2018, at 9:10 pm a citizen called 911 to report that an individual was walking down 29<sup>th</sup> Street breaking car windows, including smashing windows on two of the 911 caller's own cars. This 911 caller also stated that the suspect jumped a fence and was currently hiding at a specified address on 29<sup>th</sup> Street. The evidence shows that Stephon Clark was that individual. The subsequent investigation revealed no evidence that Stephon Clark took any property from the cars.

Sacramento Police Officers Mercadal and Robinet responded to this call. In addition, the Sacramento Sheriff's Department helicopter unit notified the Sacramento Police Department dispatcher that they were available to assist. Sheriff's Deputy Gomez was the observer in the helicopter and updated dispatch on what was seen from the air.

After contacting the citizen who called 911 and observing broken windows on two vehicles, the officers began searching the backyard the suspect was last seen entering. None of the Sacramento police officers or Sheriff's deputies involved in this incident had any knowledge that Stephon Clark was the suspect or that his grandparents lived on 29<sup>th</sup> street.

Deputy Gomez spotted an individual (later determined to be Stephon Clark) looking into a sliding glass door in the backyard of a neighboring 29<sup>th</sup> Street home. Deputy Gomez saw this individual swing a large object and break the glass door. He broadcast these observations and turned on the helicopter's onboard video camera. An 89-year-old man was living in this home and was watching TV when his rear sliding door was smashed with a cinder block.

Deputy Gomez then saw Mr. Clark jump a fence into an adjoining residential backyard. Deputy Gomez directed Officers Mercadal and Robinet to that location. Officers Mercadal and Robinet's body worn cameras had already been activated and were recording.

One of the officers spotted Mr. Clark looking into the windows of a dark SUV parked alongside of a home on 29<sup>th</sup> street. As the officers approached Mr. Clark, Officer Mercadal yelled loudly, "Stop. Stop. Show me your hands." Mr. Clark immediately ran along the side of the house turning into the backyard. The officers could not see around the back corner of the house. While unknown to any of the officers, this was the home of Stephon Clark's grandparents.

The backyard was dark with no exterior lighting. The only lighting was from the officers' flashlights. As the officers rounded the corner of the house into the backyard, both officers saw Mr. Clark facing them, standing in a shooting position behind a picnic table. Both officers saw a flash of light coming from Mr. Clark's position. Officer Mercadal believed he was being fired upon. Still frames captured from the body worn cameras show Stephon Clark behind the picnic table. A flash of light can be seen consistent with the timing and position described by the officers.

Officer Mercadal yelled, "Show me your hands. Gun." Both officers immediately took cover behind the corner of the house.

As the officers peered around the corner of the house a second time, Mr. Clark was advancing toward them in a shooting stance. The helicopter video confirms that Stephon Clark was advancing on the officers. Officer Mercadal yelled, "Show me your hands. Gun, gun, gun." Both officers then fired multiple shots, striking Stephon Clark seven times. The total time shots were fired was 4.5 seconds.

The body worn cameras also captured the officers' conduct immediately after the shooting. The officers yelled, "Show me your hands" and "Let's see your hands." Officer Mercadal asked Officer Robinet, "You alright? You Hit?" Officer Robinet responded, "Yeah, I'm good." Mercadal said, "Yeah, I'm alright. I don't think I'm hit or anything."

The officers then discussed how to safely approach Mr. Clark to remove the gun. Upon examination, it was discovered that the object Stephon Clark was holding was a cellphone, not a gun.

### **Autopsy and Toxicology Results**

The autopsy of Stephon Clark conducted by the Sacramento County Coroner's Office determined that the cause of Mr. Clark's death was multiple gunshot wounds. These conclusions were supported by four board certified pathologists employed by the Sacramento County Coroner's Office, including the Chief Forensic Pathologist. Toxicology results confirmed the presence of alcohol, *Xanax* (alprazolam), codeine, marijuana, hydrocodone and a metabolite of cocaine.

Sacramento Coroner Kim Gin obtained an independent review of this case by Dr. Gregory Reiber. Dr. Reiber confirmed the findings of the Sacramento County Coroner's Office. Additionally, the Attorney General sought an independent review of the autopsy findings from the San Diego Medical Examiner. San Diego's Chief Medical Examiner found that the Sacramento County Coroner's investigation "was comprehensive, professional, well documented, and correct in its conclusion."

Dr. Bennet Omalu, a pathologist hired by the Clark family, conducted his own autopsy of Mr. Clark and presented his findings at a press conference on March 30, 2018. Dr. Omalu did not provide a written report of his findings. Opinions he expressed at this press conference are not supported by the autopsy evidence, the conclusions of the six pathologists or the video evidence in this case.

### **Crime Lab Examination**

The Sacramento County District Attorney's Office Laboratory of Forensic Services conducted extensive forensic examination in this case. This includes crime scene investigation, firearms, trace evidence (glass and paint), and DNA analysis.

DNA testing linked Stephon Clark to evidence collected from all three cars broken into that evening.

Glass and paint analysis further connected Mr. Clark to the broken windows on these vehicles. Glass comparison also confirmed that a cinder block was used to break the rear sliding glass door of the home on 29<sup>th</sup> Street.

## **Contents of Stephon Clark's Cellphone**

Both the Sacramento Police Department and the California Department of Justice conducted a forensic analysis of Mr. Clark's cellphone. That analysis uncovered evidence that centered around a domestic violence incident that occurred less than 48 hours before the shooting. The contents of the cellphone showed that Mr. Clark was very concerned about the ending of his relationship with Salena M., not being able to see his children again, and going back to jail.

The contents of the cellphone also revealed that Mr. Clark searched the internet for information related to suicide the day before and the day of the fatal shooting.

The cellphone evidence would be admissible in court to explain Mr. Clark's state of mind and his conduct before and during the shooting.

## **March 16, 2018, Incident**

On Friday, March 16, 2018, the mother of Stephon Clark's children, Salena M., asked a neighbor to call the police stating her boyfriend hit her. The neighbor called 911 and the police responded.

Salena M. told police that Stephon Clark had hit her several times in the face, punched her with a closed fist, choked her, and threw her head against a wall. Officers saw a 3" hole in the wall with long brown strands of hair attached to it. Photographs were taken, documenting Salena's M.'s injuries as well as the damage to the wall.

While Mr. Clark was not there when officers arrived, the Sacramento Police Department documented there was probable cause to arrest him for this incident. A law enforcement computer check would have shown that Mr. Clark was "arrestable" for this offense and for violating the terms of his probation.

Mr. Clark was on three grants of misdemeanor probation at the time, including two cases of domestic violence. Salena M. was the victim of Mr. Clark's two prior domestic violence convictions. He was also on felony probation for robbery.

## **March 17-18, 2018**

In the 12-hour period following the domestic violence incident, Stephon Clark attempted to call Salena M. 76 times. None of those calls lasted more than a few seconds. However, several text messages were exchanged between them.

These text messages reveal that Mr. Clark was very concerned that Salena M. had reported the domestic violence incident to the police, that he was going to be sent back to jail and he would never see his children again. Salena M. stated she had reported the incident to the police and that she would testify against him in court.

The following is one example of numerous text messages in these exchanges:

Salena M.: "You scared for your life now? That you'll be locked in a cage the rest of ur life and never see your kids grow again?"

Mr. Clark: "You want me away from my kids? Why"

In addition to text messages with Salena M., Stephon Clark attempted to contact his probation officer during this time. He also wrote a note in his phone which appears to be a draft email to law enforcement denying this recent accusation of domestic violence, stating, "I'm pretty scared I'm going to be put in jail."

Throughout the evening of March 17<sup>th</sup>, Mr. Clark searched the internet on terms related to suicide. All of these texts and internet searches appear in the full report. An example of one of at least two dozen internet sites visited was, "How many Xanax will it take to reliably kill you?"

It should be noted that Mr. Clark's toxicology showed a combination of Xanax (Alprazolam) and alcohol among other drugs. During the time frame of these internet searches, Mr. Clark also texted various numbers looking for "Xans," Valium, and oxycodone. The text messages confirm he met someone to obtain drugs.

Stephon Clark then sent text messages to Salena M. asking her if she wanted him to kill himself. Mr. Clark later took a photograph of a handful of Xanax pills and sent it to Salena M. with a corresponding text message which stated, "Let's fix our family or I'm taking all of these."

Salena M. responded in a negative manner. This exchange occurred on March 17<sup>th</sup> at 10:12 pm and is the last known contact between Salena M. and Stephon Clark.

On March 18<sup>th</sup>, Mr. Clark continued texting others seeking Xanax.

The last cellphone activity of Mr. Clark's phone prior to the shooting occurred at 8:15 pm.

### **Legal Analysis**

Two uniformed Sacramento Police officers responded to a citizen complaint of a suspect breaking car windows and hiding in a nearby backyard. The responding officers spoke to the complainant and observed the broken car windows. A Sacramento Sheriff's helicopter assisted in that call. The observer in the helicopter saw the suspect break the rear sliding glass door of a neighboring residential home and observed that same suspect jump a fence into another residential backyard. At that point, the police officers had sufficient probable cause to detain and arrest the suspect.

The fact that the suspect, Stephon Clark, attempted to elude the pursuing officers did not diminish the officer's legal authority to detain and arrest Mr. Clark. Additionally, their efforts to detain Mr. Clark did not place the officers as "aggressors" under the law. At the point the officer yelled, "Stop. Show me your hands," Stephon Clark had a legal duty to comply with that officer's commands.

At the time the officers pursued Mr. Clark, they were unaware of his identity and his relationship to the homeowners. Based upon the facts known to the officers at that time, the suspect presented a potential danger to the residents of that home. Mr. Clark not only failed to comply with the officers' lawful demands, he took a shooting stance and advanced towards the officers. Believing that he had a gun in his hand, the officers shot Mr. Clark.

The law recognizes an inherent right to use deadly force to protect oneself or others from death or great bodily harm. This fundamental legal principle is known as the right of "self-defense." A police officer does not lose this fundamental right by virtue of becoming a police officer. Nor do police officers have to stop or retreat simply because the suspect resists.

Officers are entitled to the same protections of the law as every other citizen. The law of self-defense is well established and clear: Deadly force may be used when an officer or citizen *honestly and reasonably* believes they are in imminent danger of death or great bodily injury.

In this case, the officers' conduct and statements in the time frame immediately before and after the shooting show that both officers honestly and reasonably believed Stephon Clark was pointing a gun at them and was about to shoot or had already shot at them.

This belief is supported by several facts.

- Mr. Clark took a shooting stance;
- Officers saw a flash of light at Mr. Clark's location;
- One officer believed the flash was light reflecting off a gun;
- The other officer believed the light was the muzzle flash from a gun;
- The body worn cameras captured a flash of light near Mr. Clark during this time;
- Officer Mercadal yelled "Show me your hands. Gun" and both officers immediately took cover;
- While the officers took cover, Mr. Clark advanced toward the officers;
- While looking around the corner of the house the second time, officers saw that Mr. Clark was still in a shooting stance and had advanced at least 10 feet toward them;
- Officer Mercadal again yelled, "Show me your hands. Gun, gun, gun."

This belief is also supported by the statements of the officers captured on body worn cameras immediately after the shooting.

- Both officers asked each other if they had been hit, and both confirmed they were not hit by gunfire;
- Both demanded that Mr. Clark show his hands;
- Officer Robinet spontaneously stated that Mr. Clark was "still pointing" when he saw him again;
- Both officers discussed how to safely approach Mr. Clark to retrieve the gun.

Well-settled law requires that the reasonableness of a particular use of force must be judged from the view of a reasonable officer on the scene and not from 20/20 hindsight. An officer who honestly and reasonably believes that deadly force is necessary acts lawfully even if it is later determined that the danger did not actually exist. The law also requires that determinations of what is reasonable must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are very tense, uncertain and rapidly evolving.

### **Conclusion**

The evidence in this case demonstrates that both officers had an honest and reasonable belief that they were in imminent danger of death or great bodily injury. Therefore, the shooting of Mr. Clark was lawful and no criminal charges will be filed.

Stephon Clark's death was a tragedy that has had a devastating impact on his family and our community. A young man lost his life and many lives have been irreversibly changed. No decision or report will restore Stephon Clark's life.

The fact that criminal charges are not appropriate under the law in this case in no way diminishes the frustrations and anger that many in our community have expressed since his death. Those who have raised their voices deserve to be heard. These are trying times, but in moments like these we must rise together to make our community a better place for everyone.